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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,206	04/08/2004	Bill J. Hays	HAYS-201	7419
7590	07/03/2006		EXAMINER	
Robert E. Strauss 80519 Dunbar Dr. Indio, CA 92201			MULLER, BRYAN R	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,206	<b>Applicant(s)</b> HAYS, BILL J.	
	<b>Examiner</b> Bryan R. Muller	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 9 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species 3, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/11/2005.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The addition of the limitation that the two longitudinal segments have substantially equal, circular segmental cross sections is considered to be new matter. The disclosure that the two segments have equal cross-sections is neither disclosed in the original specification, nor is it shown in the original drawings. The drawings do not show a cross sectional view of the two segments or any other view that clearly supports that the two segments have equal cross-sections, thus

the currently amended claims are not supported by the original disclosure of the application.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "circular segmental cross sections" is unclear. It is not clear if the applicant is claiming that the longitudinal segments have circular cross section at particular segments or if the applicant is intending to claim that the cross sections are segments of circles. Please clarify the intended disclosure.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keeler (1,461,151) in view of Kroeger et al (4,583,429) and Wishart (2,624,489).
8. In reference to claim 1, Keeler discloses a tool for opening pull-tab closed containers characterized by a sealed container top having a failure line about the periphery of said top and having a tab permanently secured to said top adjacent a

peripheral edge thereof, which tool comprises a cylindrical shaft (6) with one end terminating in means for transmitting torque (8) thereto and, at its opposite ends having a working end, said working end having a circular cross section and a slot (10) open to the end of said shaft and extending longitudinally along said shaft with smooth unbroken side walls, dividing said working end of said shaft into two longitudinal segments having substantially equal circular segmental cross sections having smooth, unbroken arcuate external walls (figure 3 shows that the slot is located in the center of the shaft, thus providing equal cross-sections for each segment and figure 2 shows the "circular segmental cross sections). However, Keeler fails to disclose that one of said longitudinal segments extends beyond the terminus of the other segment and terminates in a blade tip having thickness less than the thickness of said one longitudinal segment. Kroeger discloses a similar can opening tool having a slot dividing the working end into two separate segments and discloses that one of the segments is longer than the other (abstract) and teaches that the longer segment may initially be inserted between the tab of a can and the can surface (col. 1, lines 38-40), which separates the tab from the surface of the can and allows the user to then grip the tab within the slot of the working end or grip the tab with their fingers to open the can. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make one of the two longitudinal segments of Keeler extend beyond the other to allow the longer segment to separate the tab of a can from the surface, thus providing an additional function to the can opener of Keeler and due to the shape of the Keeler invention, it may also be used to grip the tab between the two

longitudinal segments to open the can, as taught by Kroeger. Wishart discloses a multi-purpose container opener that has a slotted working end, similar to Keeler, that may be used to open cans of the type that the Keeler invention is intended to open and further discloses that tip (18) of the opener is shaped as a relatively sharp point to allow for puncturing of sealed containers (col. 3, lines 63-66) or for puncturing scored sift top containers or cracking ice (col. 4, lines 28-31). Therefore, it further would have been obvious to form the tip of the Keeler can opener with a relatively sharp tip, so that the can opener can serve even more purposes, such as puncturing sealed containers, puncturing scored sift top containers or cracking ice, as taught by Wishart. In the case that one of the longitudinal segments of Keeler extends beyond the other, as taught by Kroeger, it would further be obvious that the relatively sharp tip would be located on the end of the longer longitudinal segment, thus, forming a blade tip having a thickness less than the thickness of the shorter longitudinal segment.

9. In reference to claim 2, Keeler further discloses that the means for transmitting force comprises a handle (8), which fixedly receives said shaft.

10. In reference to claims 4 and 5, the obvious combination of Keeler, Kroeger and Wishart does not specifically disclose the dimensions of the slot but Kroeger does disclose that the slot should have dimensions sufficient to receive the exposed portion of the tab (col. 3, lines 35-36) and in view of the applicant's disclosure that a slot length between 0.75 and 1 inch and a slot thickness between 0.085 and 0.125 inches is sufficient to loosely receive the loop of a conventional pull tab (page 2, line 25-27), it is inherent that the slot of Keeler should be formed to have a length between 0.75 and 1

inch and a thickness between 0.085 and 0.125 inches, to receive the exposed portion of the tab, as taught by Kroeger.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keeler (1,461,151) in view of Kroeger et al (4,583,429) and Wishart (2,624,489) as applied to claim 1 and further in view of Larsen (1,368,038).

12. The obvious combination of Keeler, Kroeger and Wishart discloses the tool discussed supra, but fails to disclose that the blade tip is flattened. Larsen discloses a tool similar to all of Keeler, Kroeger and Wishart and discloses that the tip of the tool should be flat to allow the tip of the tool to be used to puncture the lid of the particular can type shown in figure 1 along the weakening lines and pry the tab of the lid upwards to allow the slot in the tool to engage the tab and remove the lid in the same manner as the Keeler tool is used. Therefore, it would further have been obvious at the time the invention was made to make the relatively sharp tip of the tool flattened to allow the tool to additionally open cans of the type disclosed by Larsen.

13. Although each of the tools disclosed by Keeler, Kroeger, Wishart and Larsen all function slightly differently and are intended to be used to open different type of cans, they are all intended to be used to open cans, making each of the tools analogous to each other, and the addition of the disclosed structures of Kroeger, Wishart and Larsen to the tool of Keeler will provide the Keeler tool with several additional functions, allowing the Keeler tool to open several different types of cans as well as provide additional functions, providing proper motivation to combine.

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaplan (3,025,994), Simpson (3,151,764), Eve et al (5,913,953), Dyer (3,460,411), Bergemann (1,783,070), Osmar (5,095,777) and Hughes (4,723,465) all provide tools with similar structure and/or function to the applicant's claimed invention.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R. Muller whose telephone number is (571) 272-4489. The examiner can normally be reached on Monday thru Thursday and second Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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6/12/2006